

HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G.V. SEETHAPATHY

WRIT APPEAL No. 544 OF 2006

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Between:

H. Satyanarayana

.....Appellant/Petitioner

And

The District Collector, Collectorate Office,

Mahabubnagar and two others

.....Respondents/Respondents

:: JUDGMENT ::

Counsel for the Appellant : Sri S. Girmoji Rao

Counsel for the Respondents : Government Pleader for

Civil Supplies

Dated: 12-06-2006

Per G.S. SINGHVI, CJ

Having failed to persuade the learned Single Judge to nullify order dated 10-06-2005 vide which Revenue Divisional Officer, Nagarkurnool, Mahabubnagar District cancelled his authorization as a Fair Price Shop Dealer for Sirpur Village, Nagarkurnool Mandal, the appellant has filed this appeal.

We have heard Sri S. Girmoji Rao, learned Advocate for the appellant and perused the record and are convinced that the reasons assigned by the learned Single Judge for refusing to entertain the appellant's prayer do not suffer from any legal infirmity.

A perusal of the record shows that while he was operating the fair price shop, proceedings under Section 6-A of the Essential Commodities Act, 1955 (for short 'the Act') were initiated against the appellant. After considering the explanation of the appellant, Joint Collector, Mahabubnagar passed order dated 02-04-2005, whereby he ordered confiscation of the value of the seized stocks and also directed the Revenue Divisional Officer to take disciplinary action against him. In furtherance of direction given by the Joint Collector, the Revenue Divisional Officer, Nagarkurnool issued notice dated 10-05-2005 and called upon the appellant to explain as to why his dealership may not be cancelled on the charge of having misappropriated 21 quintals of rice meant for being distributed to the labourers under the Food for Work Programme. The appellant submitted reply dated 23-5-2005. After considering the same, the Revenue Divisional Officer passed order dated 10-06-2005 for cancellation of the dealership.

The appellant challenged the legality of order dated

10-06-2005 by filing writ petition under Article 226 of the Constitution. He pleaded that the impugned order is vitiated due to violation of the rules of natural justice and the procedure prescribed under the Andhra Pradesh State Public Distribution System Control Order, 2001 (for short 'the Control Order'). The learned Single Judge dismissed the writ petition by observing that that an effective alternative remedy of appeal is available to the petitioner. The learned Single Judge further held that the order under challenge had been passed by the Revenue Divisional Officer after issuing show cause notice to the appellant and considering his explanation and this was sufficient compliance of the rules of natural justice.

Learned counsel for the appellant argued that the view taken by the learned Single Judge on the maintainability of the writ petition is erroneous and, therefore, the order under challenge is liable to be set aside. He submitted that the remedy of appeal cannot be treated as an effective alternative remedy because the Revenue Divisional Officer had initiated action at the instance of the Joint Collector, who is required to act as an appellate authority.

We have considered the submission of the learned counsel, but have not felt impressed. A careful reading of order dated 2-4-2005 passed by the Joint Collector shows that while ordering confiscation of the value of the seized stock, the officer concerned has simply directed the Revenue Divisional Officer to take disciplinary action against the appellant. In our opinion, this direction was the necessary concomitant of an order made under Section 6-A of the Act. Therefore, it cannot be said that the Joint Collector who is to act as an appellate authority under Clause 20 of the Control Order had prejudged the issue or that he will not be able to adjudicate the appeal with an open mind.

In view of the above, we hold that the appellant has failed to make out a case for making a departure of the settled rule that the High Court will not entertain writ petition under Article 226 of the Constitution if an effective alternative remedy is available to the petitioner.

For the reasons stated above, the appeal is dismissed. Ad-interim order dated 30-5-2006 passed by the Division Bench shall stand automatically vacated. However, it is made clear that while deciding the appeal, if any, filed by the appellant, the competent authority shall not be influenced by the fact that the writ petition and the

appeal filed by the petitioner-appellant have been dismissed by this Court.

At this stage, learned counsel for the appellant made a request for grant of some time to enable his client to file appeal. Learned Government Pleader says that he does not have any objection, if reasonable time is given to the appellant to avail the remedy of appeal.

In this view of the matter, we allow seven days time to the appellant to avail the remedy of appeal and direct that if the appeal is filed within this period, then the appellate authority i.e., the Joint Collector shall entertain and decide the same on merits.

G.S.SINGHVI, CJ

G.V. SEETHAPATHY, J

June 12, 2006

Ks/svs/GRR